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SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 272.

THE UNITED STATES, APPELLANT,

vs.

JOHN W. HERRON.

APPEAL FROM THE COURT OF CLAIMS.

FILED DECEMBER 11, 1897.

(16446.)

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1 In the Court of Claims.

JOHN W. HERRON
v.
THE UNITED STATES. } No. 18264.

I.—*Communication of Secretary of Treasury referring claim, filed February 14, 1894.*

TREASURY DEPARTMENT,
OFFICE OF THE SECRETARY,
Washington, D. C., February 14, 1894.

The Honorable the Chief Justice and Judges of the Court of Claims:

Pursuant to the provisions of section 1063 of the Revised Statutes of the United States, I have the honor to refer to your honorable court for adjudication the claim of John W. Herron for services as United States attorney rendered in several cases against the warden of the Ohio penitentiary, in the United States circuit court S. D. O., E. D., and in the circuit court of appeals held at Louisville, Kentucky, the whole claim, amounting to $425.00, having been approved by the Attorney-General.

The claim is referred at the request of the First Comptroller of the Treasury, who certifies that it involves controverted questions of law, and that the decision will affect a class of cases, and will furnish a precedent for future action in the adjustment of a class of cases.

All the papers in the case enclosed by the First Comptroller in his letter of the 12th instant are herewith transmitted.

Respectfully, yours,

W. E. CURTIS,
Acting Secretary.

2 In the Court of Claims.

JOHN W. HERRON
vs.
THE UNITED STATES. } No. 18264.

II.—*Petition filed April 4, 1895.*

To the Honorable the Judges of the Court of Claims:

Your petitioner, John W. Herron, a resident and citizen of the State of Ohio, respectfully represents—

That during the year 1893 he was United States attorney for the southern district of Ohio, having been regularly appointed, confirmed, commissioned, and acting in such capacity.

I.

During the year 1893, several writs of habeas corpus were sued by Sidney S. Pridgeon, William H. Bolus, William Skaggs (in two cases), and Lafayette Simpson, respectively, against the warden of the Ohio penitentiary.

The several suits were independent, one from the other, and were defended separately. In each case a discharge was ordered, and in each case an appeal was taken to the circuit court of appeals.

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All of these cases were defended by your petitioner, by direction of the Attorney-General. Petitioner rendered an account against the United States for services so rendered as follows:

In the case of	Sidney S. Pridgeon	$100.00
	William H. Bolus	25.00
	William Skaggs	25.00
	William Skaggs	25.00
	Lafayette Simpson	100.00
		$275.00

The account as presented was verified by your petitioner, and approved by the Hon. George H. Sage, judge of the southern district of Ohio, who adds to his approval the following: "I think the charges not only reasonable, but moderate."

II.

The said cases, Sidney S. Pridgeon, William H. Bolus, two cases of William Skaggs, and Lafayette Simpson, were prepared and argued by your petitioner on appeal in the circuit court of appeals at Cincinnati, where the judgments rendered in the court below were affirmed. These cases were then appealed from the circuit court of appeals, by
3 direction of the Solicitor-General, to the Supreme Court of the United States.

Petitioner presented his account against the United States for services rendered in said cases on appeal for $150.00.

He verified his account by oath, and the same was approved by Hon. William H. Taft, judge of the circuit court of appeals for the sixth circuit. The original accounts, in which the services are more specifically set forth, with verifications and approvals, are on file in this case, and petitioner requests that they may be regarded as part of this petition.

III.

The two accounts above referred to were forwarded to the Attorney-General, by him approved in the sum of $425.00, and referred to the First Auditor of the Treasury on the 23d day of January, 1894.

IV.

Under the provisions of section 1063 of the Revised Statutes, the claim was referred to this court on the 14th day of February, 1894, at the request of the First Comptroller of the Treasury, who certified that it involves controverted questions of law, and that the decision will affect a class of cases, and will furnish a precedent for future action in the adjustment of cases.

V.

Petitioner says that the whole amount of the claim, viz, four hundred and twenty-five dollars ($425.00), is due and unpaid; that no assignment of the claim has ever been made; and that he was and is the sole owner thereof.

He therefore asks judgment in his favor in the sum of four hundred and twenty-five dollars ($425.00).

DUDLEY & MICHENER,
Attorneys for Claimant.
F. P. DEWEES,
Of Counsel.

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DISTRICT OF COLUMBIA, *ss:*

Louis T. Michener, being duly sworn, deposes and says that he is a member of the firm of Dudley & Michener, who are the attorneys in fact for John W. Herron, and is authorized by a power of attorney to verify the pleadings in this case, and that the matters and things set forth in the foregoing petition are true in substance and in fact as he is informed and verily believes.

LOUIS T. MICHENER.

Subscribed and sworn to before me this 4th day of April, A. D. 1895.

[SEAL.]

L. P. SQUIRE,
Notary Public.

4 III.—*Traverse, filed May 11, 1896.*

And now comes the Attorney-General, on behalf of the United States, and answering the petition of the claimant herein, denies each and every allegation therein contained, and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States, and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such case provided, denies the said allegations, and asks judgment accordingly.

J. E. DODGE,
Assistant Attorney-General.

5 IV.—*Findings of fact and conclusion of law.*

This case having been heard before the Court of Claims, the court, on the evidence, makes the following

FINDINGS OF FACT.

I.

Under the provisions of section 1063 of the Revised Statutes the claim was referred to this court on the 14th day of February, 1894, at the request of the First Comptroller of the Treasury, who certified that it involves controverted questions of law, and that the decision will affect a class of cases and will furnish a precedent for future action in the adjustment of cases.

II.

During the year 1893 claimant was United States district attorney for the southern district of Ohio.

III.

During the year 1893 writs of habeas corpus were sued in the circuit court for the southern district of Ohio respectively by Sidney S. Pridgeon,

ROUGH POOR COPY

William H. Bolus, William Skaggs (in two cases), and Lafayette Simpson, United States prisoners confined in the Ohio penitentiary, against the warden thereof.

The several suits were independent one from the other and were defended separately. In each case a discharge was ordered, and in each case an appeal was taken to the circuit court of appeals.

All of these cases were defended by claimant by direction of
6 the Attorney-General. Claimant rendered an account against the United States for services so rendered, as follows:

In the case of Sidney S. Pridgeon	$100.00
William H. Bolus	25.00
William Skaggs	25.00
William Skaggs	25.00
Lafayette Simpson	100.00
	$275.00

The account as presented was verified by claimant and approved by the Hon. George H. Sage, judge of the southern district of Ohio, who adds to his approval the following: "I think the charges not only reasonable, but moderate."

IV.

The said cases, Sidney S. Pridgeon, William H. Bolus, two cases of William Skaggs, and Lafayette Simpson, were prepared and argued by claimant on appeal in the circuit court of appeals at Louisville, Kentucky, where the judgments in the court below were affirmed. These cases were then appealed from the circuit court of appeals, by direction of the Solicitor-General, to the Supreme Court of the United States.

Claimant presented his account against the United States for services rendered in said cases on appeal for $150.00.

He verified his accounts by oath, and the same was approved by Hon. William H. Taft, judge of the circuit court of appeals for the sixth circuit.

The only instructions given by the Attorney-General to claimant to act for defendants in the circuit court of appeals is contained in the following letter:

JULY 22ND, 1893.

JOHN W. HERRON, Esq.,
U. S. Attorney, Cincinnati, Ohio.

SIR: I am in receipt of a letter from Mr. Speed, U. S. attorney for Oklahoma, in which he says that an examination of the record in the cases of Pridgeon and Skaggs shows that the sentence was
7 imprisonment at hard labor.

You are hereby directed to take an appeal to the circuit court of appeals from the order of Judge Sage allowing the writ of habeas corpus, being careful that the sureties on their recognizances are as ample and secure as possible.

Very respectfully,

L. MAXWELL, Jr.,
Acting Attorney-General.

And the Attorney-General did not certify, as required by section 365, R. S., that the services were actually rendered, and that same could not be performed by the Attorney-General or Solicitor-General or the officers of the Department of Justice or by the district attorneys.

Nor did claimant take another oath upon entering upon this employment.

V.

The two accounts above referred to were forwarded to the Attorney-General, by him approved in the sum $425.00, and referred to the First Auditor of the Treasury on the 23rd day of January, 1894.

CONCLUSION OF LAW.

Upon the foregoing findings of fact the court decides, as a conclusion of law, that the claimant is entited to recover on finding three (III) an assimilated fee of $10 in each case, and on finding four (IV) $150, making in all the sum of two hundred dollars ($200), under the decision in the recent case of Milchrist (31 Ct. Cls. R.,), and subject to adjustment in the Treasury Department as to the claimant's maximum compensation under the decision in the Harmon Case (147 U. S., 268, 282).

The amount of the allowances as set forth in finding three (III) are disallowed.

8 V.—*Judgment of the court.*

JOHN W. HERRON
vs.
THE UNITED STATES. } No. 18264.

At a Court of Claims held in the city of Washington on the 29th day of June, 1896, judgment was ordered to be entered as follows:

The court, on due consideration of the premises, find for the claimant, and do order, adjudge, and decree that the claimant, John W. Herron, do have and recover of and from the United States the sum of two hundred dollars.

BY THE COURT.

(The court filed no opinion in this case.)

9 VI.—*Application for and allowance of appeal.*

JOHN W. HERRON
v.
THE UNITED STATES. } No. 18264.

From the judgment rendered in the above-entitled cause on the 29th day of June, 1896, in favor of claimant, the defendants, by their Attorney-General, on the 5th day of August, 1896, make application for and give notice of an appeal to the Supreme Court of the United States.

J. E. DODGE,
Asst. Atty. General.

Filed August 5, 1896.

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At a Court of Claims held in the city of Washington on the 12th day of November, 1896, upon motion of Assistant Attorney-General Dodge, the application for appeal filed herein August 5, 1896, by the defendants was allowed.

BY THE COURT.

10 In the Court of Claims.

JOHN W. HERRON
vs.
THE UNITED STATES. } No. 18264.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court and the conclusion of law thereon, of the judgment of the court, of the application for and allowance of appeal to the Supreme Court of the United States.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington, this 17th day of November, 1896.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsed on cover:) Case No. 16448. Term No. 272. The United States, appellant, vs. John W. Herron. Court of Claims. Filed December 11th, 1896.